



POLICE DEPARTMENT

May 10, 2010

MEMORANDUM FOR: Police Commissioner

Re: Detective James Polo
Tax Registry No. 916459
Narcotics Borough Bronx
Disciplinary Case No. 83971/08

The above-named member of the Department appeared before the Court on December 17, 2009, and December 18, 2009, charged with the following:

1. Said Police Detective James Polo, assigned to the Gun Enhancement Unit, on or about October 16, 2007, while on-duty, failed to comply with Sergeant Donald Morgan's lawful directives by refusing to answer said Sergeant's questions about said Detective's knowledge of another MOS's unauthorized use of a Department vehicle.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS
GENERAL REGULATIONS

2. Said Police Detective James Polo, assigned to the Gun Enhancement Unit, on or about October 16, 2007, while on-duty, was discourteous to New York City Police Sergeant Donald Morgan when questioned about said Detective's knowledge of another MOS's unauthorized use of a Department vehicle, to wit: said Detective stated to said Sergeant, "I don't see how it is any of your business what I did or did not do...you ain't [sic] my father so why are you treating me like I'm your fucking son?...this is fucking bullshit, why do I gotta [sic] tell you, what's it your business...you are not my supervisor...stop questioning me, its none of your business."

P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT – GENERAL
GENERAL REGULATIONS

COURTESY • PROFESSIONALISM • RESPECT

3. Said Police Detective James Polo, assigned to the Gun Enhancement Unit, on or about October 23, 2007, failed to comply with Sergeant Donald Morgan's lawful directives by refusing to answer said Sergeant's questions about why said Detective called the station house. (*As amended*)

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS
GENERAL REGULATIONS

4. Said Police Detective James Polo, assigned to the Gun Enhancement Unit, on or about October 23, 2007, was discourteous to New York City Police Sergeant Donald Morgan, when said Sergeant asked why said Detective called the stationhouse, said Detective answered "I don't need to talk to you, I need somebody else...what the fuck don't you understand about the fact that I don't need to talk to a supervisor...I'm telling you I have nothing to say to you, let me talk to somebody else."

P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT GENERAL
GENERAL REGULATIONS

The Department was represented by Katie O'Connor, Esq., Department Advocate's Office, and the Respondent was represented by John Arlia, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty as charged.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Donald Morgan and Sergeant John Dilapi as witnesses.

Sergeant Donald Morgan

Morgan was assigned to the Firearms Investigations Unit (FIU). He was previously assigned to the Gun Enhancement Unit (GEU). The purpose of the GEU was to debrief individuals who were arrested for criminal possession of a weapon and to assign them as confidential informants. This information, particularly that which would help identify firearm traffickers, was passed to FIU.

Morgan admitted that he was disciplined by the Department for punching an opponent in a league-organized two-hand touch football game in October 2002, while he was off-duty. Morgan explained that the opponent took offense to a block. In response, the opponent shoved Morgan and "put his hand up in a defensive manner as if to punch" Morgan. Believing he was in jeopardy of being hit, Morgan stated that he threw a punch first, striking the opponent in the face and causing an injury. Morgan pleaded guilty to harassment, which was reduced from assault. Morgan was suspended for 30 days, was required to attend a one-day anger management course, and was on modified status for approximately the balance of that year. Morgan stated that he pleaded nolo contendere in the concurrent Deputy Commissioner of Trials case and did not receive any further penalty other than the time served on suspension. Morgan testified that since that incident, he had not been the subject of any other discipline and had not been forced to attend any other anger management counseling.

Morgan testified that GEU responded to every firearm-related arrest from July 3, 2006, until approximately May 2008 when the unit was scaled back due to a shortage of personnel and the overwhelming task of responding to every arrest. Morgan was responsible for assigning cases and ensuring that they were handled in a timely fashion. Morgan would usually supervise between 5 and 13 investigators on any given day. John Dilapi was one of the other four

sergeants.

Morgan testified that around January 2007, the Respondent worked in his team for the first six or seven months that the Respondent was in the GEU. Prior to their assignments there, Morgan and the Respondent had worked together in Manhattan North Narcotics. Morgan explained that he and the Respondent were not on the same team and were just acquaintances.

Morgan testified that in 2007, as the Respondent's direct supervisor, he treated the Respondent just as he treated every other detective. Morgan had no "main problems" with him. There were, however, a couple of instances where the Respondent took offense to the way Morgan reviewed his cases. Morgan recalled one occasion where the Respondent stated that he felt like he was back in high school and Morgan was his teacher. The Respondent said that "it's like we are in school." Morgan felt that the Respondent was being discourteous.

Morgan testified that on October 16, 2007, he was informed by Chiarantano, another of the GEU sergeants, that one of the officers, Rolette Cordero, had been working the previous tour. Cordero had taken a Department vehicle without permission and brought it home to his residence. Morgan believed that Cordero received a command discipline (CD) for this conduct.

According to Morgan, about an hour or two later, he looked at the roll call and determined that Police Officer Caesar Marinelli and the Respondent were the only two still working, both on overtime, at the time that Cordero ended his tour and took the vehicle. Morgan spoke with Marinelli, who explained that he tried to fix Cordero's flat tire but did not offer any other assistance in helping Cordero get home. Morgan told Marinelli that as officers, "we all owe it to one another to try to help each other out," and that Marinelli should have gone beyond just helping Cordero fix his flat tire. Morgan explained that he decided to speak with both Marinelli and the Respondent because he was trying to impress upon them the need to look out

for one another. Morgan stated that he was disappointed that neither one of them went out of his way to assist Cordero, leaving him with a limited choice as to how to get home.

Morgan testified that after speaking with Marinelli, he walked into the main area where the Respondent was sitting and asked the Respondent to come into his office. According to Morgan, the Respondent came into his office at some point and refused to sit down, standing instead about seven or eight feet away. Morgan asked the Respondent, "What did you do to help" Cordero when he told the Respondent that his vehicle was disabled. He specifically asked whether he offered Cordero a ride.

Morgan testified that the Respondent became very defensive and told him, "You weren't even working last night so what is it your business?" Furthermore, the Respondent said, "You ain't my sergeant, I don't work for you," and, "What the fuck you treating me like your son for? You ain't my father." In response, Morgan told the Respondent that he was still his supervisor and the last supervisor to leave the night before, when the Respondent was still on the job, so therefore it was his business. The Respondent replied to Morgan saying, "I don't know what the fuck it means anything to you cause you wasn't here and I don't work for you."

Morgan was aware that the Respondent and Cordero lived [REDACTED]

[REDACTED]. He also knew that Marinelli lived [REDACTED] but was not sure [REDACTED]
[REDACTED].

Morgan testified that no supervisor was present at the time that Marinelli and the Respondent were working overtime. This was permitted in GEU, as long as the Organized Crime Control Bureau (OCCB), its parent command, was notified. Part of Morgan's responsibilities as a supervisor was to oversee timekeeping and vehicle allocation.

Morgan testified that at that point, he went to Lieutenant Mike Leahy's office to look for

Dilapi. Morgan stated that he felt that the verbal abuse from the Respondent needed to be witnessed and therefore, asked Dilapi to come into his office. According to Morgan, with Dilapi present, he again asked the Respondent the same questions and the Respondent's answers were verbatim of his earlier responses. Morgan stated that he asked the Respondent to leave his office and he told Dilapi that he will have to speak to Leahy about what to do about the Respondent. Morgan explained that the Respondent stood in the doorway and attempted to argue his position but Dilapi ordered the Respondent to leave Morgan's office.

Morgan stated that either that night or the next day, he conferred with Leahy, who decided that a "memo to file" should be written outlining what had taken place.

Morgan testified that on October 23, 2007, he heard a phone ringing constantly outside of his office and he decided to answer it from his desk. Morgan stated that it was the Respondent calling. The Respondent stated on the phone that he did not want to speak to Morgan but to someone else. Morgan explained to the Respondent that if somebody else had been available, that person would have picked up the phone. The Respondent replied, "What the fuck don't you understand about I don't want to talk to a supervisor." Morgan told the Respondent to call back when he calmed down and figured out who he wanted to speak to. Morgan then hung up.

Morgan stated that there was at least one other person in the room when he had the phone conversation with the Respondent, but he was unsure of who it was. Morgan testified that after the phone call, he conferred with Leahy and informed Leahy that he was going to issue a CD for discourtesy. Morgan initially wrote a CD for the October 23, 2007, incident. Leahy brought it to Captain Joseph Kenny, the executive officer of the Firearms Suppression Division, which oversaw GEU and was itself part of OCCB. After Kenny interviewed Morgan about the October 23, 2007, incident, however, and after Morgan informed him of the earlier incident, Kenny

instructed Morgan to rewrite the CD to include both incidents.

Morgan testified that since the October 23, 2007, incident, he had no further negative interaction with the Respondent. He interacted with the Respondent during the normal course of duty until the following spring.

On cross-examination, Morgan explained that he and the Respondent sat adjacent to one another in Manhattan North Narcotics, but they were on different teams and did not conduct operations together. Morgan did not recall having interaction with the Respondent off-duty when they were detectives in Narcotics. Morgan stated that he never played softball for Narcotics but that he did attend some of the parties and events hosted by the command.

With regard to the October 16, 2007, incident, Morgan confirmed that when he called the Respondent into his office that day, he wanted to discuss how "we all have to do the right thing amongst each other" because he was surprised that no one really helped out Cordero. Furthermore, Morgan explained that his intention was not to direct, suggest or order the Respondent to do anything but rather to state what his expectations were and critique the Respondent's actions. Morgan stated that he was not speaking to the Respondent "man to man" but as a supervisor. Morgan agreed that his critique "didn't have anything necessarily to do with duties and functions of Detective Polo as an NYPD officer."

Morgan testified that he was not worried that he might receive disciplinary action because Cordero took the vehicle home. To Morgan's knowledge, there was never any discussion or mention that there would be any disciplinary action against him.

Morgan stated that he did not recall specifically if he asked the Respondent on October 16, 2007, what time the Respondent finished the night before. Morgan explained that he had already ascertained what time the Respondent went end-of-tour because he looked at the roll call.

Morgan was interviewed on December 12, 2007, by the Integrity Control Officer (ICO) of the FSD, Lieutenant Trivigno. After reviewing his transcript of the interview, Morgan confirmed that he did not state in the interview that the Respondent had said "you're not my fucking sergeant" and "you're not my fucking father." With regard to the Respondent's statements of "you're not my father" and "I'm not your son," Morgan was unsure which statement contained an expletive, but was sure that at least one did.

Morgan testified that, prior to October 16, 2007, he reviewed the Respondent's paperwork on a daily basis. Morgan characterized the Respondent as being a good worker. Morgan stated that the way the Respondent spoke to him on October 16, 2007, was out of character and that the Respondent had never spoken to him that way previously.

Morgan confirmed that the Respondent, along with others, called him "Rock," which was his nickname. Morgan stated that under normal situations he was comfortable with them calling him "Rock." According to Morgan, up until the incident, the Respondent had not lied to him before.

Morgan affirmed that during the October 16, 2007, incident, he remained calm. Morgan stated that during the incident, the Respondent checked his watch and wrote things down in a notepad. Morgan did not know what the Respondent was writing.

Morgan stated that the workload of GEU varied by day and by tour, but that the average investigator carried about 50 cases throughout the course of a year. Morgan did not think that GEU was any more difficult for a detective than any other place.

With regard to the assault incident in October 2002, Morgan stated that he pleaded guilty to harassment even though he did not believe he was guilty of anything. Morgan confirmed that there was an order of protection issued in connection with that incident. Morgan testified that he

did not find anger management to be warranted and commented that it was a "Band-Aid. . . . something the court felt necessary to stipulate or have me stipulate to in regards to the plea."

Morgan stated that he did not use profanity with any regularity, and he "never cursed someone." Morgan denied using profanity during the October 16, 2007, and October 23, 2007, events.

With regard to the phone conversation on October 23, 2007, Morgan stated that he was not aware that the Respondent's wife worked for the Department in the same building. Morgan clarified that the Respondent never explained the purpose of his phone call.

On re-direct examination, Morgan clarified that on October 16, 2007, the Respondent did not answer any of his questions. He said that the purpose of his questions was to explore what else could have been done to avoid the situation that occurred the night before. Morgan confirmed that one of his responsibilities as a supervisor was to counsel subordinates.

Morgan asserted that he pleaded guilty to the October 2002 incident in the best interest of his family and his career, even though he claimed he did nothing wrong.

Sergeant John Dilapi

Dilapi had been assigned to the FIU since October 2009. He was previously assigned to the GEU from July 2006 to August 2008. Between August 2008 and October 2009, Dilapi was the assistant ICO. In October 2007, Dilapi was the Respondent's supervisor.

Dilapi testified that on October 16, 2007, he was in Leahy's office when Morgan knocked on the door and asked him to come downstairs because Morgan was "having some problems." Dilapi went to Morgan's office, which was shared by Dilapi and other sergeants. Dilapi sat down at his own desk. When he walked into the sergeants office, Morgan was sitting at his own

desk and the Respondent was standing up. The Respondent looked very upset.

Dilapi testified that Morgan began questioning the Respondent about why the Respondent did not help another detective the night before. The Respondent, in sum and substance, told Morgan, "I'm not your fucking son," "You have no right to question me," and, "You are not my boss." Furthermore, Dilapi testified that after Morgan told the Respondent to leave, the Respondent came back into the office and began yelling at Morgan about why Morgan was questioning him and picking on him. At that time, Dilapi told the Respondent "to please leave the room," and the Respondent did.

Dilapi testified that the Respondent did not answer Morgan's questions. Dilapi did not hear Morgan curse at the Respondent. Dilapi stated that after the Respondent left the room, he and Morgan discussed what had just transpired.

Dilapi did not recall whether he ever heard the Respondent curse while he worked with him in the GEU. Dilapi stated that after the October 16, 2007, incident, he continued to be the Respondent's supervisor for a brief time. Dilapi never had any other issues with the Respondent before or after this incident. According to Dilapi, neither the Respondent nor anyone else in the unit made a complaint to him about Morgan.

On cross-examination, Dilapi testified that he thought the Respondent did a good job as a detective. Dilapi stated that prior to October 16, 2007, he had never observed the Respondent act in such a manner and that his behavior that day was out of character.

Dilapi testified that because he was not present for the conversation between Morgan and the Respondent, he could not state what the main issue of the conversation was. Dilapi confirmed, however, that during his official Department interview, he stated that Morgan was trying to explain that it was proper for a supervisor to question a subordinate "as to his

whereabouts when performing over time or official duties.” Dilapi testified that from what he recalled, the conversation between Morgan and the Respondent was about, he guessed, the overtime issue, the Respondent’s whereabouts, and why nobody from the team helped out another detective. Dilapi admitted that he did not mention the issue about Cordero.

Dilapi indicated that other than during the October 16, 2007, incident, he only heard the Respondent using profanity “maybe joking around” but nothing that stuck in his mind. Dilapi denied that Morgan gave him a recap of what had transpired in Morgan’s presence before Dilapi came into the sergeants office.

The Respondent’s Case

The Respondent called Detective George Torres and Detective John Miata as witnesses, and he testified on his own behalf.

Detective George Torres

Torres was assigned to the FIU during August 2007. Morgan was his immediate supervisor. Torres stated that he had known the Respondent for approximately 12 years and had worked with the Respondent in other units. Torres knew Morgan from other commands as well.

Torres recalled an event in August 2007 where Morgan called all the members of the unit for a meeting. The Respondent was present. Torres testified that he did not know the exact purpose of the meeting, but that Morgan came in and started yelling at the members. Morgan said that his comments were a “one-way conversation,” meaning that no one was to question or say anything regarding what Morgan was to say. Morgan stated that he was “sick and tired of having you guys fucking John.” Torres and recalled other members looking like “what the hell

is going on.”

On direct examination, Torres asserted that he did not know what Morgan meant. On subsequent examination by the Court, however, Torres confirmed that his impression was that Morgan had a problem with people in the unit causing a problem for Dilapi. Torres explained that “someone did something that brought the attention” to Dilapi, possibly from a superior officer.

Torres testified that the Respondent and another member raised their hands to ask what was going on and Morgan told both of them to “put your fucking hand down.”

Torres stated that he did not recall the exact details of Morgan’s whole statement but that Morgan finished his speech by saying, “If anyone has a problem and wants to talk to me see me one on one.” According to Torres, Morgan’s last statement was directed in the direction of the Respondent and was made in an intimidating manner. Torres understood Morgan’s statement to be like a threat or a dare. Torres testified that this was not the only time he had heard Morgan speak in that fashion to members of the unit. It was one of many times where Morgan would come in with a strong demeanor, sometimes slipping in profanity.

Torres testified that the Respondent walked into Morgan’s office after Morgan made his final statement during the August 2007 meeting. Torres stated that he did not know “what happened at that juncture.” He did not overhear any yelling from Morgan’s office, but there was a lot of commotion because people were changing shifts, the television was on, and the doors to the administrative office were closed.

On cross-examination, Torres testified that after Morgan held the meeting, he learned “through the grapevine” that somebody forgot to call and sign in. Torres did not recall if that was exactly why Morgan had been infuriated that day, but he knew it was work-related.

Torres confirmed that when Morgan made the statement, "if anyone wants to talk to me we can do it in my office," that Morgan was talking to everybody, not just the Respondent. Torres also explained that Morgan did not specify any names when making that final statement and Morgan just made the statement with his finger pointed.

Torres testified that after the August 2007 meeting, Dilapi came and apologized to everyone for the manner in which the conversation took place. Torres did not speak to Dilapi about why he apologized. Torres did not believe he spoke to Morgan about it either. Torres testified that this behavior from Morgan was typical and just "another day in the office."

Detective John Miata

Miata began working in GEU in June 2006. He testified that in August 2007, Morgan came into the detectives room and told everyone to "shut up." Miata stated that he was "taken back" by Morgan's manner but also stated that Morgan's behavior was not unusual.

Miata testified that Morgan announced, "[T]his is a one-way conversation and nothing is up for discussion." Miata stated that some of the detectives seemed timid or afraid. Miata testified that the Respondent raised his hand to interject and Morgan told the Respondent to "put your fucking hand down." Another detective, Kenefick, raised his hand also, and the detective was also told by Morgan to put his hand down. Miata testified that it was not uncommon for Morgan to curse at members of the team.

Miata explained that Morgan concluded his speech to the detectives by stating, "If anyone has anything to say to me, alone in my office." Miata stated that Morgan's tone was loud and it was as if Morgan was challenging people to speak to him. Miata confirmed that Morgan's final comment, "if anyone has anything to say to me," was directed to the entire group of

detectives.

Miata testified that he could not specifically remember the point of Morgan's conversation in August 2007, but he confirmed that Morgan was addressing everyone in the room about a problem within the command.

On cross-examination, Miata testified that the gist of Morgan's conversation concerned the nighttime tour and detectives notifying their supervisors when they are out on cases. Miata could not recall whether any other sergeants were present when Morgan addressed the detectives that day in August 2007.

Miata did not remember whether Morgan was his direct supervisor during August 2007, but at some point in time, Miata's cases were directly reported to Morgan.

Miata admitted that he did not make a complaint about the incident or about Morgan after the incident in August 2007. Miata did not care for Morgan "when he acts unprofessional and inappropriate as he did that night," and did not like his supervisory style. Miata confirmed that he had more than one incident with Morgan that left him with a bad impression. Miata testified that Morgan once put him on a foot post after Miata returned from a dignitary assignment. With regards to the foot post assignment, Miata had to watch the parking lot at GEU while in uniform, which he was not happy about.

Miata testified that he did not think the way Morgan addressed the unit in August 2007 was proper. Miata stated that Morgan addressed everyone in a bullying fashion, which created a fear among the detectives that were supervised by Morgan that they might suffer retaliation if they reported his behavior. Miata agreed, though, that Morgan had the right as a supervisor to address the unit about command procedures.

On re-direct examination, Miata agreed that while Morgan had the right to address the

unit, Morgan did not have the right to speak to the detectives the way he did.

With regard to Morgan's order for Miata to stand a foot post, Miata stated that Morgan told him to "stand by until the lieutenant would report in to work later on in the day." Miata confirmed that he deemed Morgan's order to be a punishment but he had no idea why he was being punished.

Miata testified that while he was standing the foot post, Morgan came out to scratch Miata's memo book and there were people laughing and taking pictures of this incident from the third or fourth floor window of the building. Miata then said to Morgan, "Do you think that's funny?" Miata explained that Morgan did not like what Miata said to him and Morgan became "challenging." Morgan then yelled at those who were laughing and taking pictures.

Miata testified that Morgan had cursed at him on at least four or five occasions.

During questioning by the Court, Miata testified that he was still assigned to the GEU at the time of trial but was currently in the Brooklyn office.

The Respondent

The Respondent was assigned to Narcotics Borough Bronx from October 1996 until about 2002 or 2003. He was then transferred to Manhattan North Narcotics and was assigned as an investigator. Around 2006, the Respondent was assigned to GEU. He returned to Bronx Narcotics in April 2009.

The Respondent testified that he and Morgan worked together as investigators at Manhattan North prior to entering GEU. They were on different teams so their interaction mostly involved seeing each other in the office and saying hello. According to the Respondent, he and Morgan got together for some social events, including attending a softball tournament and

going out for drinks a couple of times. They also sometimes went out on 10-13 calls together.

The Respondent stated that he knew Morgan as "Rock" and he continued to call Morgan this while he was assigned to GEU. Morgan was a supervisor at GEU at that time. The Respondent testified that he never referred to Morgan as Rock in front of members of the service, but admitted doing so when they were by themselves or at social gatherings.

The Respondent testified that in August 2007, Morgan came into the office where everyone was doing work, shouted "shut up," and then announced "this is a one-way conversation." Morgan ordered that when the detectives went out on debriefings, they were to call the command and speak to a supervisor in case the supervisor wanted them to do anything further. Morgan also said, "I don't understand why you guys are fucking John." The Respondent understood this to mean that some of the members did not call and confirm with Dilapi about some cases, which led to the lieutenant or the commanding officer questioning Dilapi.

The Respondent testified that he raised his hand during Morgan's speech because he wanted to explain to Morgan that there were many instances where no supervisor was available. The Respondent asserted that Morgan pointed towards him and told him to "put [his] fucking hand down." Morgan was screaming at the top of his lungs at everybody.

The Respondent testified that on October 16, 2007, he was working overtime in the early morning. He and Marinelli were the only two members working. Cordero had finished his tour at 3:00 a.m. About fifteen minutes later, Cordero called the Respondent to ask for help because Cordero's car had a flat tire. When the Respondent and Marinelli got downstairs, Cordero was trying to remove the lugs but stripped them. There was no way to fix the tire, so the officers pushed the car into a parking spot. The Respondent and Marinelli told Cordero that they were

going upstairs to wash their hands. Cordero told them he would be right in. The Respondent testified that he asked Cordero if he needed anything else and Cordero replied that he was fine.

The Respondent testified that when he returned upstairs, the ICO questioned the Respondent and Marinelli about where they had been. They explained to the ICO that they were helping Cordero, which the ICO did not have a problem with. The ICO further questioned the Respondent about his end of tour. The Respondent told the ICO that he and Marinelli were leaving in ten minutes, at 4:00 a.m. The Respondent stated that it was not uncommon for him to have overtime.

The Respondent testified that Cordero never came back upstairs like he said he would.

The Respondent testified that during his next tour of duty on the evening of October 16, 2007, Marinelli told him that Morgan wanted the Respondent in his office. The Respondent stated that when he went into Morgan's office, he could tell that Morgan was agitated since Morgan was "pacing back and forth" and "throwing papers on top of his desk." According to the Respondent, Morgan said to him, "How can you do this to me," "Why you fucking me," and "I am going to take a hit for this." The Respondent asked Morgan what he was referring to. Morgan then responded, "[Y]ou know what I am talking about," "[Y]ou know Cordero took the car home." The Respondent explained that at that point in time, he did not know that Cordero had taken a car home and he was surprised that Morgan was acting this way toward him.

The Respondent stated that Morgan continued screaming and cursing at him. The Respondent testified that while he was sitting on the desk opposite to Morgan's desk, Morgan came toward the Respondent with his fist closed and said, "I feel like fucking you up, you fucking spic." At that point, the Respondent said to Morgan, "With all due respect, I want another supervisor in the room." Dilapi ultimately came into the room and Morgan went on to

explain only some of the facts that actually happened. According to the Respondent, Dilapi was “shaking” because Morgan was screaming and throwing things. The Respondent stated that the whole time he “kept cool” and simply sat on top of the desk.

The Respondent affirmed that Morgan’s behavior was commonplace. Dilapi’s fearful reaction to Morgan’s behavior was not uncommon either. The Respondent described how Dilapi simply sat in his chair speechless while Morgan was screaming. The Respondent stated that at one point, he said to Dilapi, “This is why I called you to the office.” According to the Respondent, Morgan threatened to give him a CD twice, once before Dilapi came into the room and a second time while Dilapi was in the room. The Respondent stated that he questioned Morgan both times as to why Morgan wanted to give him a CD, but Morgan never gave him an answer. After the first threat, the Respondent wrote down the time the threat was made in his memo pad. The Respondent explained that Morgan became more upset when he saw the Respondent writing in his memo pad, and Morgan approached him with a closed fist. This was when the Respondent asked for a second supervisor. Morgan’s office door was open, but the Respondent did not recall whether there was anyone in the vicinity.

The Respondent testified that he did not use any profanity toward Morgan, and he answered any questions that were posed to him by Morgan and Dilapi. The Respondent explained that Morgan was not asking questions but instead was just accusing him of not helping Cordero. According to the Respondent, Morgan told the Respondent that he was disappointed in him. The Respondent replied, “I’m sorry, I get disappointed at my kids.”

The Respondent testified that Morgan told him that that as a “senior guy,” the Respondent was responsible for Cordero when a sergeant was unavailable. The Respondent contended, however, that Morgan did not bring him into the office to counsel the Respondent on

“comradery.”

The Respondent asserted that he told Morgan he did not understand what Morgan expected of him because the Respondent himself would have had to take a Department car in order to give Cordero a ride home. The Respondent stated, “It’s not like I didn’t render him a hand.” The Respondent testified that if Cordero was around at 4:00 a.m. when the Respondent went off duty, he would have given him a ride in his personal car. The Respondent noted at trial that he had done so in the past.

The Respondent denied making the statements “I’m not your fucking son” and “You are not my fucking father.” The Respondent described his demeanor while in Morgan’s office as “angry” and “shocked.” The Respondent stated that he never raised his voice and did not really get a chance to speak. The Respondent claimed that because of his family’s military background, he knew how to take orders and respect his elders.

The Respondent stated that the CD issued by Morgan referenced Dilapi’s presence in order to support Morgan’s claim. The Respondent testified that, in his presence, Dilapi did not get a complete overview by Morgan of what transpired prior to Dilapi entering the office.

Respondent’s Exhibit A is the CD prepared by Morgan on October 23, 2007. The narrative reads: “Detective Polo became very defensive and stated that ‘I don’t see how it’s any of your business what I did or did not do, you wasn’t here so why should I have to tell you anything?’ Detective Polo went on to state that ‘You aint my father so why are you treating me like your son?’”

The Respondent explained that Morgan would assess his cases and that Morgan would return the cases with red-pen markups. The Respondent described one instance where Morgan returned a case folder to the Respondent and jokingly said, “Jimmy, don’t kill me.” When the

Respondent opened the folder, he saw red all over the case. The Respondent then jokingly said to Morgan, "Oh, shit, I feel like I'm back at high school and you're my teacher."

The Respondent stated that both Dilapi and Morgan had given him formal reviews. No disciplinary actions had been lodged against the Respondent by Morgan or Dilapi prior to October 16, 2007. He stated that Morgan's behavior toward him changed, however, after the August 2007 interaction.

The Respondent testified that his wife was also a member of the Department and was assigned to a traffic unit within the same building that he worked in. The Respondent stated that on October 23, 2007, while he was off duty, his wife, who was on duty, called and informed him that a car belonging to someone working in the building was blocking her car. She said she had already spoken to members in the traffic unit and the Emergency Services Unit, and the car did not belong to anyone in those units. Therefore, she asked the Respondent if he could find out whether the car belonged to someone in his unit.

The Respondent called his office extension and Morgan picked up. Morgan identified himself and asked, "How can I help you?" The Respondent identified himself and asked to speak with Brennan, a GEU officer and one of the administrative personnel. Morgan asked the Respondent what he wanted and again the Respondent asked to speak to Brennan. According to the Respondent, Morgan replied, "If you can't tell me what you want, then you know what, call the main number," and Morgan hung up.

The Respondent asserted that he did not ask Morgan to run the plate number because it was inappropriate to ask a sergeant to do such a favor. The Respondent denied using profanity or speaking in a discourteous manner while on the phone with Morgan.

The Respondent testified that he never cursed in front of Morgan "[o]n a professional

level,” but it was common to do so when they were on a “friendly mode or whatever.”

On cross-examination, the Respondent recalled his official Department interview, conducted by Trivigno, on December 12, 2007 (see DX 2, tape & DX 2a, transcript). The Respondent asserted that he mentioned Morgan clenching his fist, but was unsure if “it came out” during the interview because, “If I was asked that question, I would have told him.” The Respondent contended that there were “a lot of things” he did not mention in the interview. He explained his version of events “[t]o a certain extent.” The Respondent confirmed that at no point in the interview did he allege that Morgan said, “I feel like fucking you up, you fucking spic.” The Respondent asserted that he did not mention this remark previously because he believed “as a person we all make mistakes” and was not someone “that likes to take vengeance.” He knew he would have “hurt” Morgan by mentioning this, and never thought that these proceedings would take place because he never thought that Morgan would “go to this extent to say what he is saying I did.” The Respondent acknowledged that he could have made “a federal OEEA complaint” but did not. He asserted that this was not the first time the “spic” comment had been lobbed at him by supervisors.

The Respondent also confirmed that he did not mention during his official Department interview that Dilapi was “shaking” and speechless during the October 16, 2007, incident. The Respondent asserted, “If it’s not in the GO-15, I wasn’t questioned about that.” The Respondent confirmed that he was asked the “catchall” question at the end of the interview and said that he had nothing else to add. The Respondent stated that he answered “just the basics.”

The Respondent testified that on October 16, 2007, Marinelli did not tell the Respondent anything about the conversation that Morgan had with Marinelli before the Respondent went in to see Morgan. The Respondent explained that after Morgan stated several times that he was

going to “get a hit” for what happened with Cordero, the Respondent asked Morgan, “Why are you so concerned?” The Respondent did not recall whether he stated in his official Department interview that Morgan said he was “going to get a hit for this.”

The Respondent admitted that when Morgan told him that he was disappointed in the Respondent, the Respondent felt that Morgan was treating him with disrespect. This was not the first time he felt that Morgan spoke to him disrespectfully.

The Respondent testified that while Morgan was his direct supervisor when the Respondent started at GEU, Dilapi was the Respondent’s direct supervisor in October 2007.

The Respondent testified that when Dilapi entered the room on October 16, 2007, he did not ask what was going on. At no point did Dilapi tell the Respondent to “cool down.” When Dilapi saw the manner in which Morgan was acting, Dilapi told the Respondent that it was okay for him to leave the room. The Respondent stated that he never had any problems with Dilapi, and felt that Dilapi was a good supervisor. He testified that he was angry with Morgan during the encounter, but was okay once he left the room. The Respondent did not make a complaint against Morgan, but on a later date he did speak to Leahy about the incident.

After working in the unit for approximately a year, the Respondent asked for a transfer back to Narcotics because Narcotics provided a more challenging and satisfying work environment.

The Respondent noted that he was scheduled to work the afternoon of October 23, 2007. He would have been unable to leave the house until his wife got home to watch the children. He testified that he was not annoyed when Morgan answered the telephone and did not let him speak to someone else. According to the Respondent, he explained to Morgan why he was calling, but he was not going to ask a supervisor to run a license plate for him.

The Respondent admitted that when Morgan yelled at the Respondent in August 2007 for raising his hand, Kenefick also raised his hand and was told by Morgan to put it down.

On re-direct examination, the Respondent testified that there were instances where Dilapi apologized for Morgan's behavior. According to the Respondent, Dilapi told him, "Jimmy, you know how [Morgan] is. Don't worry about it. Just let it be." When the Respondent spoke to Leahy about the October 17, 2007, incident, he told Leahy that he had a disagreement with Morgan and that he did not want to continue working in GEU. The Respondent testified that he did not harbor any animus or negative feelings toward Morgan.

The Department's Rebuttal Case

The Department recalled Morgan on rebuttal.

Sergeant Donald Morgan

Morgan testified that he did not recall specifically a meeting with the members of GEU in August 2007, but it was possible. He did not recall starting a meeting by telling people to shut up or by saying he was giving a one-way conversation. Morgan did not specifically recall a meeting where the Respondent or Kenefick raised his hand while Morgan was speaking. Morgan did not hold a meeting in August 2007 during which the Respondent or Kenefick raised his hand and Morgan told them to put their "fucking hand down."

On cross-examination, Morgan contended that he never cursed at any member of the unit in August 2007.

Upon examination by the Court, Morgan testified that he did not recall a meeting in or around August 2007 during which he spoke to the members of the unit about problems that they

may have been causing for Dilapi.

FINDINGS AND ANALYSIS

Introduction

The Respondent is charged with two incidents in the Gun Enforcement Unit in which he allegedly refused to answer a supervisor's questions and was discourteous toward the supervisor. Both times, the supervisor was Sergeant Donald Morgan. The Respondent and Morgan had worked together for several years, both at GEU and previously in Narcotics. At some point, Morgan was promoted to sergeant. The two were at least work acquaintances at some point, but the testimony demonstrated that there was a personality conflict between them that worsened when Morgan became a supervisor in the same unit where the Respondent was an investigator. Additionally, because the unit was a small one, supervisors were not always present, even when personnel were working overtime. This was permitted as long as the parent command, OCCB, was notified. Nevertheless, problems arose, including when Cordero, a police officer, took a Department vehicle home without permission. Another time, according to the Respondent's witnesses, higher-ranking supervisors asked Dilapi, another sergeant, about cases where the investigators had not conferred with Dilapi.

Specification Nos. 1 & 2

In the early morning hours of October 16, 2007, a police officer assigned to GEU, Cordero, took a Department vehicle home without permission when his personal car got a flat tire. The Respondent was one of at least three investigators in GEU that were working overtime. Morgan was the last supervisor to leave the night before. The next day, Morgan inquired of the

Respondent and Marinelli, another investigator, into what happened. Morgan testified that he asked specifically why they did not give Cordero a ride. Specification 1 charges that the Respondent refused to comply with Morgan's "lawful directives" to answer questions about the Respondent's "knowledge of another MOS's unauthorized use of a Department vehicle."

Morgan testified that the Respondent answered by saying that it was none of Morgan's business because he was not working that night and was not the Respondent's supervisor. The Respondent said, "You ain't my sergeant, I don't work for you," and, "What the fuck you treating me like your son for? You ain't my father." Specification 2 covers these alleged discourteous remarks.

The Respondent asserted that rather than ask him questions about what happened, Morgan was angry and asked the Respondent why he was "fucking" him, i.e., causing problems for him, and worried that he was "going to take a hit for this." The Respondent asked Morgan what he was talking about, and Morgan said, "[Y]ou know Cordero took the car home." The Respondent explained that at that point in time, he did not know that Cordero had taken a car home and he was surprised that Morgan was acting this way toward him. The Respondent asserted that it was Morgan that was screaming and cursing at him, and that Morgan clenched his fist, came toward the Respondent, and said, "I feel like fucking you up, you fucking spic."

The Respondent's claim that Morgan threatened him with physical violence and directed a racially offensive slur toward him is not credible in light of the fact that the trial was the first forum in which the Respondent ever mentioned these claims. He never made a complaint to the Internal Affairs Bureau or to the Office of Equal Employment Opportunity about Morgan's alleged remarks. The Court rejects the Respondent's dubious claims and finds him incredible.

The credibility of Morgan's account was bolstered by the testimony of Dilapi, another

sergeant whom Morgan asked to come into the room. Dilapi observed Morgan question the Respondent about why the Respondent did not help another detective the night before. The Respondent, in sum and substance, told Morgan, “I’m not your fucking son,” “You have no right to question me,” and, “You are not my boss.” The Court credits these observations as being those of a disinterested witness, and notes that Dilapi generally described the Respondent as a good detective.

The Respondent’s counsel argued that because Morgan listed Dilapi on the command discipline (RX A) as having “witnessed at that time the unprofessional and disrespe[c]tful actions of” the Respondent, Dilapi had no “other choice . . . but to stick now to the story” at trial. Counsel asserted that Morgan placed Dilapi at the scene to bolster Morgan’s own account. Yet counsel also argued that Morgan never expected the matter to go beyond the CD stage. If so, Morgan would have little reason to bolster the CD narrative by lying about Dilapi’s presence. Thus, the Court rejects the Respondent’s assertion that Dilapi never observed any discourtesy.

Several details of the Respondent’s testimony lend significant insight into the disputed facts. The Respondent portrayed Morgan as violently enraged and concerned not with the operation of GEU, nor with its indirectly-supervised overtime activity, but mainly with his own exposure for the Cordero incident. Yet the Respondent testified that Morgan told him that he was disappointed in him. The Respondent also testified that he told Morgan he did not understand what Morgan expected of him. The Respondent’s own testimony is corroboration of Morgan’s account, in which he testified that he asked the Respondent what he did to help Cordero, including offering him a ride home.

Further, the Respondent testified that when Morgan said he was disappointed, the Respondent replied, “I’m sorry, I get disappointed at my kids.” The Court found this to be an

odd remark and seemingly out of place, and immediately interrupted the direct examination to ask the Respondent to clarify. The Respondent stated that he would be disappointed in his children if they did something wrong, but he did not do anything wrong regarding the Cordero situation. This remark demonstrates that the Respondent took offense to what he viewed as Morgan's paternalistic tone. It supports the Department's assertion that the Respondent told Morgan, in sum and substance, that Morgan was not his father and should stop treating him like his son, whether profanity was used or not.

In sum, the Court finds Morgan's account credible, and the Respondent's account incredible. The Department proved that the Respondent refused to answer Morgan's questions about the previous night (Specification No. 1) and was discourteous in doing so (Specification No. 2). As such, the Court finds the Respondent Guilty.

Specification Nos. 3 & 4

Like the first two specifications, the Respondent is charged in the second two with both refusing to answer Morgan's questions and acting discourteously toward him. Morgan testified that on October 23, 2007, he answered a continuously-ringing phone in the GEU office. The Respondent was on the phone and Morgan asked what he needed. The Respondent replied, "What the fuck don't you understand about I don't want to talk to a supervisor."

The Respondent asserted that he called the GEU office from home because his wife's car was blocked in. His wife worked for the Department out of the same building, and the Respondent was trying to track down the blocking vehicle. Morgan answered the phone. The Respondent asked to speak to another officer, Brennan, because he did not want to ask a supervisor to do a favor like that. Morgan asked what the Respondent wanted, and the

Respondent again asked to speak to Brennan. The Respondent denied, however, using profanity.

Because the Respondent admitted refusing to answer Morgan's question about why he was calling, the Court finds him Guilty of Specification 3.

The incident took place about a week after the angry confrontation between Morgan and the Respondent regarding the Cordero matter, in which the Respondent was told he was getting a CD. It also makes sense that the Respondent would be upset at having to explain to Morgan why he was calling. Additionally, because the Respondent admitted that he did not want to speak to a supervisor about performing this favor, it makes sense that he would have told Morgan "I don't need to talk to you, I need somebody else," or "I don't need to talk to a supervisor." As such, the Court credits Morgan's testimony that the Respondent spoke discourteously to him and cursed at him about the reasons for calling. The Court accordingly finds the Respondent Guilty of Specification 4.

Alleged Bias of Morgan

The Respondent has argued that Morgan was biased against him, and that this bias led Morgan to bring false charges against him. Any such bias would be relevant only for the purpose of showing that Morgan would falsify his testimony against the Respondent. See generally Davis v. Alaska, 415 U.S. 308, 316 (1974); People v. Corby, 6 N.Y.3d 231, 234-35 (2005).

The proof of this alleged bias concerned an incident in August 2007 about which the Respondent testified and presented two other witnesses. The Respondent's witnesses stated that Morgan convened a meeting of the GEU officers in which he profanely announced that he was angry that the unit was causing problems for Dilapi with Dilapi's supervisors. When the

Respondent and another officer, Kenefick, raised their hands, Morgan said “put your fucking hand down.” Morgan also said that if anyone had a “problem” and wanted to talk to him, Morgan would be available “one on one.” Torres and Miata, the Respondent’s witnesses, took this as a threat or dare toward the Respondent.

It is not necessary for the Court to determine whether the meeting occurred – the Department and Morgan denied it – because it does not constitute proof of bias. Morgan may have spoken in a brusque manner to the unit, but that is a far cry from such a personal dislike of the Respondent as to lie about him at trial. The Court notes that Morgan testified he had no major problems with the Respondent, and that Kenefick was also allegedly yelled at by Morgan. Finally, the Court views Morgan’s “one on one” comment as exactly what it sounded like: if any of the officers had an issue with what he was saying, those officers could discuss it individually with Morgan rather than doing so with the entire unit present. Torres testified that the Respondent went into Morgan’s office right after the meeting, an unusual move if the Respondent was “intimidated.”

In sum, the Court finds no evidence of bias on the part of Morgan against the Respondent. Furthermore, the Court finds that Morgan’s prior harassment conviction, which involved a dispute between players at an intramural football game, does not have any significant impact upon his credibility concerning the incidents with the Respondent at the GEU office.

PENALTY

In order to determine an appropriate penalty, the Respondent’s service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222, 240 (1974). The Respondent was appointed to the Department on June 30, 1995. Information from his personnel

folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has been found Guilty of two instances of refusing to answer a supervisor's questions and being discourteous toward that supervisor. The same supervisor was involved in both incidents, which took place within a week of each other. Whatever the stresses of working in the unit might have been, the Respondent was responsible for turning a personality conflict into two profanity-laced tirades. Furthermore, the Court notes the Respondent's incredible and unsupported allegation of a violent and racist supervisor, claims that went beyond a mere denial of the charges. Accordingly, the Court recommends an enhanced penalty of 30 vacation days. See Case No. 78287/02 (after plea, 6-year member with no prior record forfeited 21 suspension days already served for discourtesy to a supervisor; the member was on limited duty and assigned to clerical; having become upset with the assignment, she screamed obscenities at supervisor in presence of other Department members).

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner – Trials



POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE JAMES POLO
TAX REGISTRY NO. 916459
DISCIPLINARY CASE NO. 83971/08

On the last three annual performance evaluations contained in his file, the Respondent received ratings of 3.5 “Highly Competent/Competent” in 2006, 4.0 “Extremely Competent” in 2005, and 3.0 “Competent” in 2004. [REDACTED]

[REDACTED] The Respondent has no prior formal disciplinary history.

For your consideration.



David S. Weisel
Assistant Deputy Commissioner – Trials



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

August 3, 2010

CHAN

Memorandum for: First Deputy Commissioner
Attention: Chief of Personnel

**Subject: ADMINISTRATIVE TRANSFER OF A UNIFORMED MEMBER
OF THE SERVICE**

1. **Det. James Polo, Tax # 916459**, was recently the subject of Disciplinary Case No. 83971/08.
2. Separate and apart from the disciplinary process, the Police Commissioner also directs that Det. Polo be immediately transferred to a Detective Borough Queens Precinct Detective Squad, subject to the exigencies of the Department.
3. Further, Det. Polo will not be the subject of any future transfer without the explicit approval of the Police Commissioner.
4. Forwarded for necessary attention.

BY DIRECTION OF THE POLICE COMMISSIONER

Michael E. Shea
Assistant Chief
Commanding Officer
Police Commissioner's Office

APPROVED
AUG 04 2010
RAYMOND W. KELLY
POLICE COMMISSIONER